

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2245 of 1992

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

HEIRS & LEGAL REPRES OF JETHABHAI K PATEL

Versus

COLLECTOR

Appearance:

Mrs.K.M.Mehta for Petitioners

Mrs. Manisha Lavkumar, AGP for Respondent No. 1

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI

Date of decision:20/10/2000

CAV JUDGEMENT

By this petition under Article 227 of the Constitution of India, the petitioners seek quashing of the order of the Collector, Surat dated 2.4/5/1987 and the order of confirmation of the same passed by the State Government through the Special Secretary (Revenue) dated

25.2.1992 passed in Revision.

2. The relevant facts leading to this petition are as under:-

3. Late Jethabhai Kalidas Patel was the owner of the agricultural land Survey No. 310 of Village Kathargam, Taluka Chaurasi, District Surat. The present petitioners are his legal representations. Permission for use of the land for non-agricultural purpose i.e. for construction of residential houses was obtained from the Municipal Corporation on 15.12.1971. A part of the construction having not been found in accordance with the sanctioned plan, the construction was regularised by order dated 30.11.1974 passed by the Municipal Corporation.

4. After some period, since the construction was put to use for running a factory in the name and style of Ajanta Textiles, the owners made an application to the Collector, Surat for grant of permission to use the land Survey No. 310 (which came to be included in Town Planning Scheme No.III with final plot mentioned as No.132) for industrial purpose.

5. The Collector, Surat vide order dated 18.4.1998 granted necessary permission for use of the said land along with super structures for non-agricultural purposes, but, on payment of tax under Section 67 A of the Bombay Land Revenue Code and Special revenue under Rule 81 of the Bombay Land Revenue Rules. The permission was granted on certain conditions annexed to the order marked as Annexure A dated 30.11.1984.

6. After grant of the above permission by the Collector, Surat for use of land for non-agricultural purposes on payment of the necessary amount for regularisation, the petitioner obtained certificates from Surat Municipal Corporation to get its industrial units registered under the Bombay Shops and Establishments Act. He also obtained necessary permission from the Government of Gujarat for his power-looms under the Textile Control Order of 1986. The petitioner was regularly subjected to property tax as 'factory' by the Corporation. It may also be mentioned that the land Survey No. 310 (which is now final plot no.132 under the Town Planning Scheme III of Surat) is under general industrial zone as is apparent from certificate produced with the petition as Annexure E.

7. The petitioners were served with a notice dated 1.4/5.1986 alleging that the original building plan

submitted to the Corporation was for construction of residential premises on Survey No. 310 but the construction is being utilised for factory purpose. On the above mentioned alleged contravention of the conditions of the construction permission, the Collector proposed to cancel its earlier order dated 30.11.1974 by which permission was granted for use of the land for non-agricultural purpose of residence only.

8. The petitioner submitted a reply to the show cause notice stating that due permission for use of land for factory purposes was obtained from the Corporation and the Collector has no powers under the Bombay Land Revenue Code in view of the saving provisions contained in Section 488 of the Bombay Provincial Municipal Act, 1949.

9. Ignoring the factual and legal submissions made by the petitioners, the Collector, Surat by the impugned order dated 2nd April/May, 1987 held that instead of using the land for residential purposes the use of the land for industrial purposes was in contravention of the conditions of the grant. The Collector, therefore, cancelled the order of permission granted on 30.11.1974. The Collector also directed the Corporation to take necessary steps for removal of the construction of the petitioner on the land.

10. Against the order of the Collector, Surat, the petitioner approached the State Government by invoking the powers of revision. The Special Secretary, (Revenue Department) of the State of Gujarat by the impugned order dated 25.2.1992 rejected the revision of the petitioner and upheld the order of the Collector holding that the land - Survey No.310 was subdivided into several final plots under the Town Planning Scheme and for all the subdivided plots necessary permission for its use for industrial purposes having not been obtained, the Collector made no mistake in cancelling the permission earlier granted for breach of the conditions of the grant.

11. Mrs.K.M.Mehta, Learned Counsel appearing for the petitioner took this Court through the several orders passed relating to the grant of permission for use of land for non-agricultural purposes including the impugned orders passed by the Collector and the Special Secretary, Revenue. Her main contention is that the action of the Collector is per se without jurisdiction because as an effect of the provisions contained in Section 488 of the Bombay Municipal Corporation Act, the powers in relation

to the land within the Corporation limits and under the Town Planning Scheme vested exclusively in the Corporation Authorities. Learned Counsel for the petitioner also tried to impress upon this Court that no condition of the grant of the land for its user for non-agricultural purpose had been breached. It is submitted that initially the agricultural land was got diverted for its use for construction of residential houses but subsequently with due permission from the Corporation, the construction was used for factory purposes. Permission for the purpose has been granted not only by the Corporation Authorities but also the other Authorities of the State under the Shops & Establishments Act and the Textile Control Order. It is submitted that the impugned order of the Collector is in excess of his power and jurisdiction and the Special Secretary committed error in confirming the same.

12. Mrs.Manisha Lavkumar, Ld. Asst. Government Pleader appearing for the State in her reply invited pointed attention to the contents of the impugned order of the Collector and the order of the Special Secretary, (Revenue). Special emphasis was placed on the contents of Para 4 of the impugned order of the Special Secretary, Revenue. On behalf of the State, she tried to explain to this Court that original Survey No. 310 under the Bombay Land Revenue Code, as agricultural land was subdivided under the Town Planning Scheme No.III resulting into creation of final plots no.123, 137, 131 & 132. According to the Special Secretary, permission for construction was obtained only for Final Plot No.132 but in respect of other plots of original Survey No. 310, no permission for construction was obtained. It is on the above ground that the Special Secretary, Revenue came to the conclusion that construction of plots over other than plot no.132 of original Survey No. 310 was unauthorised and the Collector was justified in revoking the earlier permission grant for use of Survey No. 310 for non-agricultural purpose that is for residence only.

13. With the assistance of the Counsel appearing for the parties, I have tried to understand the meaning of the contents of the operative parts of the impugned orders of the Collector and the Special Secretary (Revenue). The basis of the order of the Collector is that the construction was permitted on the land for residential use and its use for factory purposes was contravention of the permission original granted. The order of the Special Secretary passed in revision however upholds the action of the Collector on a total different ground. In the revisional order of the Special

Secretary, it has been mentioned that original Survey No. 310, which was a agricultural land governed by Bombay Land Revenue Code is within the Corporation limits and is part of Town Planning Scheme No.III of the Surat Urban Development Authority. Survey No. 310 was subdivided into final plot nos.123, 127, 131 & 132. According to the Special Secretary, part of land of final plot no.131 & 132 was to be reserved for use of construction of 80 feet road. On the unobjectionable portion of plot no.132 permission was granted for construction but on other final plots of the original survey number, no construction permission was ever granted. It has been stated by the Revenue Secretary that construction on plots, other than Plot No.132, on which permission for construction was not granted was totally unauthorised and the action of the Collector was therefore maintained on that basis.

14. As has been stated above in the statement of facts, the grounds on which the Special Secretary held the petitioner's construction as unauthorised were not made part of the show cause notice which was issued by the Collector. The Collector has taken action on certain stated grounds mentioned above, but, his action has been upheld by the Special Secretary on totally different grounds. The petitioner thus had no opportunity to show cause against the contravention alleged and found proved in the order of the Special Secretary.

15. The Learned Counsel for the petitioner in challenging the order of the Collector on the ground that it is without jurisdiction, has placed reliance on the provisions of Section 488 of the Bombay Provincial Municipal Corporation Act which read as under:-

"Section 488. Savings in respect or certain provision of Bombay Land Revenue Code, 1879.

Notwithstanding the provisions of section 48, 65, 66 and 67 of the Bombay Land Revenue Code, 1879 -

(1) the use of any land for any purpose to which it may lawfully be put under the provisions of this Act shall not be prohibited in exercise of the powers conferred by or under the said Code;

(2) it shall be sufficient for any occupant of land assessed or held for the purpose of agriculture to show to the satisfaction of the Collector that he has

complied with all the requirements of this Act and of the rules, regulations and by-laws to entitle such occupant to permission under Section 65 of the said Code subject to the condition of the payment of altered assessment and fine, if any, for the use of his holding or part thereof for any purpose unconnected with agriculture."

Sub-section 1 of Section 488 contains a prohibition that powers under Section 48, 65, 66 and 67 of the Bombay Land Revenue Code shall not be exercised in respect of use of land which may be permitted or granted under the provisions of the Bombay Provincial Municipal Corporations Act. Assuming that the contentions advanced on behalf of the Government Pleader are correct that on all the final plots which were carved out of original Survey No. 310 which was agricultural land, unauthorised non residential construction has been raised in excess of permission granted for only the final plot no. 132, the action for alleged contravention could have been taken only by the Authorities of the Municipal Corporation. The exercise of powers by the Collector under the Code is barred by the provisions of Section 488 of the Bombay Provincial Municipal Corporation Act, 1949.

16. For the aforesaid reasons, this petition is allowed. The impugned order of the Collector dated 2.4.1987 (Annexure G) and the revisional order of the Special Secretary dated 25.2.1992 (Annexure I) are hereby quashed.

17. It is however made clear that the order in this petition shall not prejudice any lawful action contemplated or maintainable against the petitioner at the instance of the authorities of the Corporation for alleged contravention, if any, of the permission granted for construction but only to be taken in accordance with the provisions of the B.P.M.C. Act, 1949.

Rule is made absolute. No order as to costs.

(D.M.Dharmadhikari, CJ)

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